

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

HOWARD F. CARROLL, #1067360,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 6:15-cv-569-JDK-KNM
	§	
JOHN RUPERT, et al.,	§	
	§	
Defendants.	§	
	§	

**ORDER OF DISMISSAL**

Plaintiff Howard F. Carroll, a Texas Department of Criminal Justice inmate proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983.


Plaintiff has filed a motion for a voluntary dismissal, which was docketed on February 8, 2021. Docket No. 335. In his motion, Plaintiff specifically asserts that he seeks to dismiss the “above numbered & styled cause of action” and cites Federal Rule of Civil Procedure 41(a)(1)(i).

Rule 41(a)(1) permits a plaintiff to dismiss his action without leave of the court by either filing a notice of dismissal prior to service of a responsive pleading or by filing a stipulation of dismissal signed by all parties. Here, several Defendants have answered or otherwise responded to Plaintiff’s complaint, and his motion to dismiss is not a stipulation signed by all parties. Accordingly, this action “may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2).

The Court notes that this case has been pending—with several interlocutory appeals filed and adjudicated throughout—since June 2015. Dismissing this case, without prejudice, at this late stage of the proceedings would prejudice Defendants, who have exerted significant time and effort throughout the case. *See Gaines v. United States*, 2020 WL 6293143 \*2 (N.D. Tex. Oct. 6, 2020) (“Courts have found plain legal prejudice when the plaintiff moves to dismiss the case at a late stage of the proceedings after the parties have exerted significant time and effort . . .”) (citing *In re FEMA Trailer Formaldehyde Prod. Liab. Litig.*, 628 F.3d 157, 162-63 (5th Cir. 2010)). Thus, the Court will dismiss Plaintiff’s claims in this case, but with prejudice.

Having considered Plaintiff’s request to voluntarily dismiss his case, and the history and status of the case, the Court hereby **GRANTS** Plaintiff’s motion for voluntary dismissal (Docket No. 335). It is **ORDERED** that Plaintiff’s claims in this case are **DISMISSED WITH PREJUDICE**.

So **ORDERED** and **SIGNED** this 10th day of February, 2021.

  
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JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE